

DECISION

Dispute Codes:

CNC, CNQ, MNDC, OLC, RP

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. The tenant also applied for compensation for loss under the *Act*, for the landlord to comply with the *Act* and make repairs to the rental unit. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation under the *Act*? Was the landlord negligent in conducting repairs to the rental unit?

Background and Evidence

The tenancy began December 01, 2009. Neither party filed an agreement into evidence. Both stated that the agreement was verbal. However, both parties were not in agreement with the terms of the verbal agreement.

The landlord is an organization that assists citizens in their rehabilitation from health and addiction problems by providing them with subsidized housing and natural health remedies, in exchange for some housekeeping work. The tenant's responsibility was to clean the back parking lot. The landlord stated that the tenant did not fulfill his part of the arrangement, while the tenant stated that he did. The monthly rent is \$1,100.00 and the landlord subsidizes \$725.00. The tenant pays his share of \$375.00.

On November 30, 2010, the landlord served the tenant with a letter that informed him that the term of the tenancy (one year) was over and if he wanted to continue to live in the rental unit, he would be required to pay the full rent of \$1,100.00.

The letter allowed the tenant 60 additional days to make arrangements to either move out or enter into a tenancy contract for the full amount of rent.

The tenant filed an application to dispute the notice to end tenancy even though he was served with a letter and not a notice to end tenancy in the approved form.

The tenant stated that the shower has not worked since the start of the tenancy and is claiming \$360.00 for expenses incurred to shower at the YMCA. The tenant did not file any evidence to support the expense he stated he incurred. The landlord stated that the building is extremely old and does not have adequate plumbing to install a shower faucet. She stated that the previous tenant was also aware of this issue and the shower was never operational. She also stated that the tenant was informed of this at the start of tenancy and agreed to shower at the YMCA.

The tenant stated that he made several requests to the landlord to fix the shower without success. The landlord denied having received such requests and stated that she had not heard of it prior to being served the notice of hearing. The tenant did not have any evidence by way of written letters to the landlord regarding requests for repair of the shower faucet.

Analysis

Section 52 of the *Residential Tenancy Act* speaks to the form and content of a notice to end tenancy. It states that in order to be effective, a notice to end tenancy when given by a landlord must be in the approved form.

In this case, the landlord served the tenant with a letter informing him that he would no longer qualify for the subsidy and requested him to make arrangements to move out or pay the additional rent.

Since the landlord has not served the tenant with a notice to end tenancy, in the approved form pursuant to section 52, I find that the notice is invalid and accordingly, the tenancy will continue.

Regarding the tenant's claim for compensation for the lack of a shower facility in the rental unit, I find that both parties have opposing views of the verbal arrangement.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms and whether both parties agreed that the shower would not be available for the tenant's use. The tenant did not file any evidence to support his requests for repairs and the landlord denies having received any. The tenant had the opportunity to apply for an order for repairs but continued to occupy the unit without making an application. Therefore, I find that the tenant's application for compensation must be dismissed.

Conclusion

The tenancy will continue and the tenant's application for compensation is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 09, 2011.

Residential Tenancy Branch